

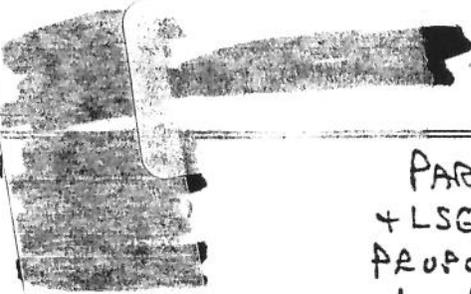
STATE OF CALIFORNIA

~~CONFIDENTIAL~~  
795,2162

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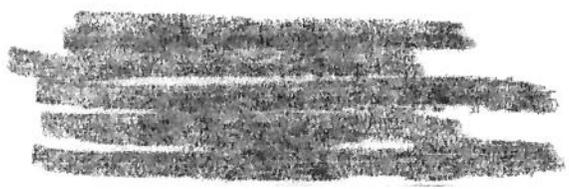
Reg 1595  
1660  
1661 ✓



PARENT  
+ LSG. SUBSID.  
PROPOSED "MERGER"  
etc. RE: Assets  
LSG. INVENTORY  
(incl. U.T.E.)

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Executive Secretary

November 6, 1984



Dear \_\_\_\_\_

This is in reply to your letter of September 26, 1984, addressed to Chief of Field Operations Robert Nunes which was referred to the legal staff for reply. You request our opinion on the application of sales and use tax to the following transactions:

PARTIES

\_\_\_\_\_ is a \_\_\_\_\_  
\_\_\_\_\_ is engaged in the general \_\_\_\_\_ business in California and foreign countries. The \_\_\_\_\_ maintains its principal office \_\_\_\_\_ California. The \_\_\_\_\_ is the parent company of numerous subsidiaries which operate throughout the United States.

\_\_\_\_\_ ) is a wholly-owned subsidiary of the \_\_\_\_\_ and is engaged in equipment leasing and lease financing. \_\_\_\_\_ owns four inactive subsidiaries, Lease Holding IX through XII.

\_\_\_\_\_ is a wholly-owned subsidiary of the \_\_\_\_\_ and is engaged in equipment leasing and lease financing. It holds one active leasing subsidiary, \_\_\_\_\_, and three inactive leasing subsidiaries, \_\_\_\_\_ I.

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III and IV. \_\_\_\_\_ is also the parent of \_\_\_\_\_ which is engaged in equipment leasing and holds all of the stock of \_\_\_\_\_

STATEMENT OF FACTS

\_\_\_\_\_ wishes to simplify and consolidate its leasing operations by restructuring them in the manner described below. The restructuring will involve various intercorporate transfers of stock and the merger of several leasing subsidiaries into one company.

The proposed consolidation involves three steps:

(1) \_\_\_\_\_ will distribute to the \_\_\_\_\_ a dividend consisting of all of its stock in \_\_\_\_\_

(2) Immediately thereafter, the \_\_\_\_\_ will contribute all its stock in \_\_\_\_\_ to \_\_\_\_\_. The \_\_\_\_\_ will not receive any consideration for this transfer.

(3) \_\_\_\_\_ will be merged into \_\_\_\_\_. The outstanding stock of \_\_\_\_\_ will be exchanged for shares of stock in \_\_\_\_\_. The outstanding stock in \_\_\_\_\_ will be cancelled. Subsequent to the merger, \_\_\_\_\_ will continue the business operations of the four merged companies.

In our opinion, steps 1 and 2 above are not subject to sales and use tax since they involve only a transfer of corporate stock which, for sales and use tax purposes, is an intangible.

Step 3 above becomes far more complicated since your letter suggests that whether considered as statutory mergers, occasional sales, or sales for resale, no sales tax would apply. We shall below discuss specifically your three suggested interpretations.

If in fact step 3 is a "statutory merger", no sales or use tax will apply. This is pursuant to Regulation 1595(b) (3) which provides that:

"Tax does not apply to a transfer of property of a constituent corporation to a surviving corporation or new corporation pursuant to a statutory merger under Sections 1100-1305 of the California Corporations Code or similar laws of other states."

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Note that, to be nontaxable, the merger must be a "statutory merger" and not merely some other form of re-organization or de facto merger. We note further that, under a true statutory merger, any leased property would continue in its previous status as tax paid or, if not tax paid, continue to be subject to tax measured by rental receipts.

As to your occasional sales interpretation, in our opinion, as to any capital assets transferred, the transfer will satisfy the definition of occasional sale in Revenue and Taxation Code (all section references herein after are to such code) Section 6006.5(b) which states that:

"Any transfer of all or substantially all the property held or used by the person in the course of such activities when after such transfer the real or ultimate ownership of each property is substantially similar to that which existed before such transfer."

Still on the occasional sales analysis, as to any leasing inventory other than mobile transportation equipment (MTE), if the sale is by a subsidiary holding a sellers permit or required to hold a sellers permit which purchased the leased property without the payment of sales or use tax then, within Section 6094.1, would have the option of paying tax on the purchase price of the property or paying tax measured by rental receipts. If originally purchased tax paid, then no further tax would be due on the transfer. If the property was transferred from a subsidiary that did not hold a sellers permit and was not required to hold a sellers permit, then again, would have the option with Revenue and Taxation Code Section 6094.1 of paying tax measured by purchase price or by rental receipts.

Still on the occasional sale analysis, if the leased property transferred is MTE and the transfer is from a subsidiary holding or required to hold a sellers permit who originally purchased the property ex-tax, will have the option of paying on purchase price or fair market value (see Section 6243.1). If the MTE was originally purchased tax paid, there will be no further tax on the transfer. If the transfer is from a subsidiary not holding or required to hold a sellers permit, the same Section 6243.1 option between purchase price or fair market value will be available.

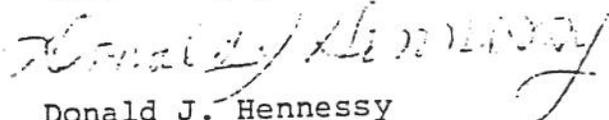
Finally, as to your sale for resale analysis, assuming that neither the statutory merger or occasional sale analysis discussed above apply, capital assets are obviously not for resale and their transfer will be subject to tax. As to the leasing inventory other than MTE, if the selling subsidiary was

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collecting tax measured by the rental receipts then [redacted] could give a resale certificate and could continue collecting tax measured by rental receipts. On the other hand, if the leases by the selling subsidiary were not taxable because tax or tax reimbursement had been paid on the original purchase price, [redacted] would not have the option of purchasing for resale; rather, tax would apply to the purchase of the leasing inventory. As to MTE, the Section 6243.1 option between tax on purchase price or tax on fair market rental value would be available.

If you have further questions, feel free to write me.

Very truly yours,



Donald J. Hennessy  
Tax Counsel

DJH:rar